

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MALIBU TEXTILES, INC.,	:	Civil Action No. : 07 Civ. 4780
	:	
Plaintiff,	:	Judge Scheindlin
-against-	:	
	:	
	:	
CAROL ANDERSON, INC. and CABI, LLC,	:	
	:	
Defendants.	:	
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ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS
CAROL ANDERSON, INC. and CABI, LLC.

DEFENDANTS CAROL ANDERSON, INC. ("CA") and CABI, LLC ("CABI") (collectively, "Defendants"), by and through their undersigned counsel, LAZARUS & LAZARUS, P.C., as and for their Answer and Affirmative Defenses to the Complaint of PLAINTIFF MALIBU TEXTILES, INC. ("PLAINTIFF"), respectfully set forth, represent and allege as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 1 insofar as the same alleges the nature of Plaintiff's action, except refer to the Complaint for the best evidence thereof, and further, and in any event, deny any act, conduct or omission on Defendants' part giving rise to a claim, cause of action or remedy to Plaintiff for, on account of, or related to the laws, rules and statutes referenced therein for the content thereof.

2. Deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 2, except admit that from time to time representatives of

Plaintiff and Defendants have met in contemplation of or for the purpose of transacting business.

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 3, except refers to the Complaint and the laws, rules and statutes referenced therein for the content thereof.

4. Without admitting liability, or any contested fact or issue in connection therewith, admit the allegations of paragraph 4, except respectfully refer to the laws, rules and statutes referenced therein for the content thereof.

5. Without admitting liability, or any contested fact or issue in connection therewith, admit the allegations of paragraph 5, except respectfully refer to the laws, rules and statutes referenced therein for the content thereof.

6. Without admitting liability, or any contested fact or issue in connection therewith, admit the allegations of paragraph 6, except respectfully refer to the laws, rules and statutes referenced therein for the content thereof.

7. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 7.

8. Defendants admit the allegations of Paragraph 8 of the Complaint.

9. Defendants admit the allegations of Paragraph 9 of the Complaint.

10. Without admitting liability, or any contested fact or issue in connection therewith, admit the allegations of paragraph 10, except respectfully reserve the right to amend, modify, or supplement this admission if, as and when the specific facts, circumstances and matters relevant herein require such amendment, modification, or

supplementation so as to more fully and completely respond to the general nature of the allegations pleaded.

11. Deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 11.

12. Deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 12, except admit that Defendants transact business within this district and derive revenue from intrastate and interstate commerce.

13. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 13.

14. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 14.

15. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 15, except refer to **Exhibit A** to the Complaint for the content thereof.

16. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 16 except refer to **Exhibit B** to the Complaint for the content thereof.

17. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 17, except refer to **Exhibit C** to the Complaint for the content thereof.

18. Defendants deny knowledge or information sufficient to form a belief as to

the truth of the allegations set forth in the paragraph of the Complaint marked and numbered 18, except refer to **Exhibit D** to the Complaint for the content thereof.

19. Defendants deny so much of the allegations set forth in the paragraph of the Complaint marked and numbered 19 as, directly or indirectly, allege an infringement of copyright or other wrongful conduct as to Plaintiff, except admit that from time to time representatives of Plaintiff and Defendants met, at which meetings samples were shown.

20. Defendants deny so much of the allegations set forth in the paragraph of the Complaint marked and numbered 20 as, directly or indirectly, allege an infringement of copyright or other wrongful conduct as to Plaintiff, except admit that from time to time representatives of Plaintiff and Defendants met, at which meetings samples were shown.

21. Defendants deny so much of the allegations set forth in the paragraph of the Complaint marked and numbered 21 as, directly or indirectly, allege an infringement of copyright or other wrongful conduct as to Plaintiff, except admit that with respect to the allegedly copyrighted materials no purchase or sale or other agreement was made or entered into.

22. Deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 22.

23. Deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 23.

24. Deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 24.

25. Plead to each and every allegation set forth in the paragraph of the Complaint marked and numbered 25 by referring to letters referenced therein for the content thereof, except deny any act, conduct or omission on the part of Defendants giving rise to a claim, cause of action or liability to Plaintiff herein.

26. Deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 26.

27. Plead to each and every allegation set forth in the paragraph of the Complaint marked and numbered 27 as hereinbefore alleged herein.

28. Deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 28.

29. Deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 29.

30. Deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 30.

31. Deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 31.

32. Deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 32.

33. Deny each and every allegation set forth in the paragraph of the Complaint marked and numbered 33.

FIRST AFFIRMATIVE DEFENSE

34. The Complaint fails to state a cause of action upon which relief can be

granted.

SECOND AFFIRMATIVE DEFENSE

35. The Copyrighted Work is insufficiently original to warrant protection under the Copyright laws of the United States.

THIRD AFFIRMATIVE DEFENSE

36. The Plaintiff's claims must fail because, upon information and belief, the Defendants' work of art was independently created.

FOURTH AFFIRMATIVE DEFENSE.

37. The Plaintiff's claims must fail because the works of art subject hereof are not substantially similar.

WHEREFORE, DEFENDANTS CAROL ANDERSON, INC. and CABI LLC. respectfully demand judgment dismissing Plaintiff's Complaint in its entirety, and for such other, further and different relief as this Court deems just, adequate and proper.

Respectfully submitted this 2nd day of August, 2007.

LAZARUS & LAZARUS, P.C.

Attorneys for Defendants

CAROL ANDERSON, INC. and CABI, INC.

By: _____

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To: **COWAN, DEBAETS, ABRAHAMS
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Attention: **NANCY E. WOLFF, ESQ.**
MATTHEW A. KAPLAN, ESQ.

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Index No.: 07-Civ. 4780 (SAS)

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